

JS 44 (Rev. 12/07) (cand rev 1-16-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

AUREFLAM CORPORATION, a California corporation

DEFENDANTS

TUYEN HUY NGUYEN, individually and doing business as PHO HOA HUNG and PHO HOA HUNG II, et al.

(b) County of Residence of First Listed Plaintiff Sacramento
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

John C. Gorman
Gorman & Miller, P.C.
210 N Fourth Street, Suite 200
San Jose, CA 95112 (408) 297-2222

Attorneys (If Known)

E-filing

C08 01910 BZ

ADR

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ 1 PTF ☒ 1 DEF Incorporated or Principal Place of Business In This State ☐ 4 PTF ☐ 4 DEF
- Citizen of Another State ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 Foreign Nation ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury — Med. Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury — Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	PERSONAL PROPERTY	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 650 Airline Regs.	<input checked="" type="checkbox"/> 840 Trademark 9	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	PRISONER PETITIONS	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DJWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise		Habeas Corpus:	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	<input type="checkbox"/> 530 General	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 550 Civil Rights	IMMIGRATION		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment		<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other		<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights				

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 USC Sections 1114 and 1125

Brief description of cause:

Lenham Act service mark infringement

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ TBDCHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)

(PLACE AND "X" IN ONE BOX ONLY)

☐ SAN FRANCISCO/OAKLAND☒ SAN JOSE

DATE

04/09/08

SIGNATURE OF ATTORNEY OF RECORD

ADR E-filing

ORIGINAL FILED

APR 10 2008

Richard W. Wleking
Clerk, U.S. District Court
Northern District of California
San Jose

1 John C. Gorman, #91515
Charles J. Stiegler, #245973
2 GORMAN & MILLER, P.C.
210 North Fourth Street, Suite 200
3 San Jose, CA. 95112
(408) 297-2222 (phone)
4 (408) 297-2224 (fax)

5 Attorneys for Plaintiff
AUREFLAM CORPORATION

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

C08 01910

11 AUREFLAM CORPORATION, a
California corporation;

12 Plaintiff,

13 v.

14 TUYEN HUY NGUYEN,
15 individually and doing
business as PHO HOA HUNG and
16 PHO HOA HUNG II; TU TIEN
NGUYEN, individually and
17 doing business as PHO HOA
HUNG and PHO HOA HUNG II;
18 LONG CUU VU, individually and
doing business as PHO HOA
19 HUNG II and DOES 1 through
10, inclusive;

20 Defendants.

Case No.

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR
VIOLATION OF LANHAM ACT (15
U.S.C. §§ 1114 and 1125);
VIOLATION OF CAL. BUS. &
PROF. CODE §§ 17200 & 17500

DEMAND FOR JURY TRIAL

BZ

23 Plaintiff Aureflam Corporation ("Aureflam") alleges:

24 JURISDICTION AND VENUE

25 1. This is a civil action brought under 15 U.S.C. §§ 1114
26 and 1125. This court has subject matter jurisdiction over
27 plaintiff's claims under 15 U.S.C. § 1121 and 28 U.S.C. § 1367.
28

1 Long Cuu Vu is also doing business in conjunction with defendants
2 Tuyen Huy Nguyen and Tu Tien Nguyen, including doing business under
3 the fictitious business name of Pho Hoa Hung II at the restaurant
4 located at 410 West A Street, Hayward, California 94541

5 6. Plaintiff is ignorant of the true names and capacities of
6 the defendants sued under the fictitious names "DOES 1 through 10,
7 inclusive." Plaintiff is informed and believes that each such
8 fictitiously named defendant is liable in some manner for the acts
9 and omissions set forth herein. When the true names and capacities
10 of such fictitiously named defendants are ascertained, plaintiff
11 shall amend this complaint to insert the same.

12 7. On information and belief, at all times mentioned herein,
13 the defendants, and each of them, were acting on their own behalf
14 and/or as the agents, servants, partners, joint venturers,
15 conspirators, and/or employees of the other defendants.

16 GENERAL ALLEGATIONS

17 8. Aureflam is the owner of a federal registration on the
18 "Pho Hoa" service mark in International Class 42 covering the field
19 of "restaurant services." The "Pho Hoa" service mark was
20 officially registered by Aureflam with the United States Patent &
21 Trademark Office ("USPTO") on November 19, 1996 (Registration No.
22 2,017,091). The "Pho Hoa" mark became "incontestable" pursuant to
23 Section 15 (15 U.S.C. § 1065) and Section 33(b) (15 U.S.C. 1115(b))
24 of the Lanham Act in 2004. As a result of plaintiff's efforts, the
25 "Pho Hoa" service mark and brand have become well known both
26 throughout the United States and internationally.

27 9. Defendants presently own and/or are involved in the
28 operation of Vietnamese-style restaurants in Oakland and Hayward,

1 California that do business under the name "Pho Hoa Hung"
2 (sometimes known as "Pho Hoa Hung I") and "Pho Hoa Hung II."

3 10. Prior to filing this lawsuit, plaintiff sent written
4 notice to the defendants demanding that they cease and desist use
5 of the "Pho Hoa Hung" mark or any other mark that is confusingly
6 similar to "Pho Hoa."

7 11. Defendants have ignored and have not responded to
8 plaintiff's cease and desist request.

9 FIRST COUNT

10 (Violation of the Lanham Act,

11 15 U.S.C. §§ 1114(1)(a) and 1125(a), Against All Defendants)

12 12. Plaintiff Aureflam repeats and realleges the allegations
13 of paragraphs 1 through 11.

14 13. Defendants have used, and continue to use the "Pho Hoa
15 Hung" mark in connection with the operation of their Vietnamese
16 style restaurants. Said mark is confusingly similar to plaintiff's
17 "Pho Hoa" mark and is being used without the consent of plaintiff.
18 On information and belief, continued use of the "Pho Hoa Hung" mark
19 is likely to cause confusion, mistake, and/or deceive the public.

20 14. On information and belief, as a direct result of the
21 defendants' conduct, Aureflam has sustained, and continues to
22 sustain, damages in an amount not yet ascertained. In addition,
23 Aureflam is entitled to recover interest at the legal rate.

24 15. Defendants have intentionally and willfully used the "Pho
25 Hoa Hung" mark in connection with the sale, offering for sale, or
26 distribution of goods and/or services. Plaintiff Aureflam is
27 therefore entitled to recover judgment for three times the
28 defendants' profits or Aureflam's damages, whichever is greater,

1 together with reasonable attorney's fees and costs, pursuant to 15
2 U.S.C. § 1117(b).

3 16. Unless defendants are enjoined from operating their
4 restaurant under the "Pho Hoa Hung" name, plaintiff Aureflam will
5 sustain, and is threatened with continuing to sustain, irreparable
6 injury for which damages and other remedies at law are inadequate.
7 Injunctive relief is also necessary to avoid a multiplicity of
8 suits based on each future violation that may be committed by the
9 defendants.

10 SECOND COUNT

11 (Violation of Cal. Bus. & Prof. Code §§ 17200
12 and 17500 Against All Defendants)

13 17. Plaintiff Aureflam repeats and realleges the allegations
14 of paragraphs 1 through 16.

15 18. Within the past four years, the defendants have engaged
16 in acts of unfair competition and/or false advertising within the
17 meaning of California Business & Professions Code §§ 17200 and
18 17500 by engaging in the above-described unlawful, unfair and
19 fraudulent businesses practices and unfair, deceptive, untrue, and
20 misleading advertising.

21 19. Plaintiff Aureflam is entitled to issuance of preliminary
22 and permanent injunctions prohibiting further acts of unfair
23 competition and false advertising by the defendants.

24 PRAYER FOR RELIEF

25 WHEREFORE, plaintiff Aureflam prays for judgment against the
26 defendants and each of them as follows:

27 (1) Damages and/or disgorgement of defendants' profits and
28 ill-gotten gains according to proof, together with interest at the

1 legal rate;

2 (2) Treble damages pursuant to 15 U.S.C. § 1117(b);

3 (3) Preliminary and permanent injunctive relief;

4 (4) Costs of suit;

5 (5) Attorney's fees as permitted by law; and

6 (6) Such other relief as the court deems appropriate.

7
8 GORMAN & MILLER, P.C.

9
10 By 

11 JOHN C. GORMAN
12 Attorneys for Plaintiff
13 Aureflam Corporation
14
15
16

17 DEMAND FOR JURY TRIAL

18 Pursuant to Fed. R. Civ. P. 38(b), plaintiff hereby demands
19 trial by jury.
20

21 GORMAN & MILLER, P.C.

22 By 

23 JOHN C. GORMAN
24 Attorneys for Plaintiff
25 Aureflam Corporation
26
27
28